

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Michael Miller Petitioner, v. COUNTY OF LANCASTER, et. al., Respondents.	CIV. NO.: 1:24-CV-00014 (Judge Jennifer P. Wilson) (Magistrate Judge Martin C. Carlson)
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PETITIONER’S MEMORANDUM OF LAW REGARDING VENUE

Petitioner, Michael Miller [“Miller”], files this Memorandum of Law regarding venue in response to this court’s order (Doc. 36), and states:

I. PROCEDURAL HISTORY

1. On January 4, 2024, Miller filed a verified Petition (Doc. 1) in District Court of the Middle District of Pennsylvania.
2. That week, the case was assigned to Magistrate Judge Susan Schwab.
3. On February 1st and February 9th, government respondents filed objections under FRCP 12(b). See Doc. 8 and Doc. 16.
4. The motions filed under FRCP 12(b) did not raise objection for improper venue.
5. On April 8th, the clerk docketed “VERBAL ORDER REASSIGNING

CASE - Case reassigned to Magistrate Judge Martin C Carlson for all further proceedings. (jw)”

6. On April 11th, Magistrate Judge Martin C. Carlson raised *sua sponte* “our concerns regarding whether venue is proper or appropriate here, IT IS ORDERED that the parties shall file brief legal memoranda addressing this question on or before April 25, 2024. (*Doc. 36*)
7. Magistrate Carlson’s order cited two cases to support his concerns regarding venue - *Stjernholm v. Peterson*, 83 F.3d 347, 349 (10th Cir. 1996) and *Costlow v. Weeks*, 790 F.2d 1486, 1488 (9th Cir. 1986).

II. STATEMENT OF FACTS

Miller’s petition states, “Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occur in the Middle District of Pennsylvania judicial district”.

Neither respondent raised an objection to venue when given opportunity to do so in their motions under FRCP 12(b).

III. ISSUES ADDRESSED

1. Whether the court may raise *sua sponte* a venue challenge after defendants waived this objection.

Suggested Answer: No

2. Whether venue is proper in the Middle District of Pennsylvania.

Suggested Answer: Yes.

IV. THE COURT’S *SUA SPONTE* ORDER

According to *Stjernholm v. Peterson*, 83 F.3d 347 (10th Cir. 1996), the case Magistrate Carlson cited in support in his brief, the court held, “A party waives the right to challenge venue if he fails to raise that defense either in his responsive pleading or in a motion to dismiss under Fed.R.Civ.P. 12(b)(3). Fed.R.Civ.P. 12(h)(1)...At any time before the defendants waive the the defense of improper venue, a district court may raise on its own motion an issue of defective venue...The district court did not raise the defense of improper venue before [defendants] waived that issue...In light of the defendants’ waiver, it was error for the district court to order [Plaintiff] to show cause...”

Likewise, in Magistrate Carlson’s other cited case, *Costlow v. Weeks*, the court held that the defendant waives the venue objection if it does not raise it “when given the opportunity to do so”, such as in its motion under FRCP 12(b). It further held that the “district court may not raise issue of improper venue *sua sponte* where defendants have waived their objection to venue”.

Respondents had the opportunity to raise an objection to venue in their

motions filed under FRCP 12(b). *See* FRCP 12(b)(3) (“improper venue”).

Therefore, as held in *Stjernholm*, it appears that “it was error for the district court to order [parties] to show cause.”

V. IMPROPER VENUE

Miller believes the venue statement in his Petition is correct pursuant to 28 U.S.C. § 1391**(b)(2)**. Additionally, 28 U.S.C. § 1391**(b)(1)** states that “A civil action may be brought in a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located.” Accordingly, Petitioner believes that venue is proper in the Middle District of Pennsylvania.

Respectfully Submitted:

/s/ Michael Miller

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Date: April 24, 2024

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served by e-filing a true and correct copy of the foregoing document to the following:

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Respectfully Submitted,

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Dated: April 24, 2024